

**MEMO ENDORSED**

# Gregory Zimmer, Esq.

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GZimmer@GZimmerLegal.com  
O: (914) 402-5683  
M: (516) 991-1116

January 13, 2021

**VIA ECF**

Honorable Valerie Caproni, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 443  
New York, New York 10007

Re: In re Navidea Biopharmaceuticals Litigation, Case No. 19-cv-01578-VEC

Dear Judge Caproni:

We represent Defendant/Counterclaim Plaintiff/Third-Party Plaintiff Dr. Michael M. Goldberg, M.D. (“Dr. Goldberg”) in the above-referenced matter. We write to follow up on our letter of yesterday, January 11, 2021 in which we requested that you, Judge Caproni, either (i) order Plaintiff/Counterclaim Defendant Navidea Biopharmaceuticals, Inc. (“Navidea”) to comply with the going-forward advancement protocol adopted by your Opinion and Order dated August 24, 2020, or (ii) schedule an immediate telephonic conference with you, Judge Caproni, to address the issue.

The reason we requested a conference with you, Judge Caproni, is that on Sunday, January 10, 2021, Magistrate Freeman entered a docket entry [Dkt. No. 177 – no document attached] stating that she will not enter an order requiring Navidea to comply with the advancement protocol. This issue had been addressed to Magistrate Freeman through multiple letters requesting that an order be entered requiring Navidea to comply with the protocol beginning in October, 2020 [Dkt. Nos. 147, 158, 163, 169, 172 and 176 (copies enclosed)]. We were therefore surprised when we received an ECF notice yesterday, January 12, 2021, that a telephonic conference to address the issue was scheduled with Magistrate Freeman, rather than you, Judge Caproni. Unless you have instructed Magistrate Freeman to address the issue and enter an appropriate order to give effect to the advancement protocol, it is not clear how such a call could resolve the issue in light of Magistrate Freeman’s statement in Docket Entry No. 177 that she would not do so.

We therefore respectfully request that an immediate telephonic conference be scheduled with you, Judge Caproni. In light of the fact that Your Honor adopted the protocol in August

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2020, that Dr. Goldberg has complied with it each month since, that we have been requesting that the Court address this issue through multiple letters beginning in October, 2020, and that Magistrate Freeman stated on January 10 that she would not order Navidea to comply with the protocol, we respectfully request that the conference not be delayed more than a week.

Thank for your attention to this matter.

Respectfully submitted,

/s/ Gregory Zimmer, Esq.

Gregory Zimmer, Esq.  
360 Lexington Avenue, Suite 1502  
New York, NY 10017  
(914) 402-5683  
GZimmer@GZimmerLegal.com

Enclosures

cc: Barry Kazan, Esq.  
Alain Baudry, Esq.

Application DENIED. The parties must appear for the teleconference as scheduled before Magistrate Judge Freeman.

SO ORDERED.



HON. VALERIE CAPRONI  
UNITED STATES DISTRICT JUDGE

1/13/2021